

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

REMARKS

Claims 1, 2, 4-9, 11-18, 20-22 and 24-26 were pending in the application prior to current response. Claims 1, 8, 14 and 17 have been amended herein. Claims 5, 12, 20-22 and 24-26 have been canceled. Claims 2, 4, 6, 7, 9, 11, 13, 15, 16 and 18 remain in the application unchanged by this amendment. New claims 28-33 have been added. Accordingly, after entry of this amendment, claims 1, 2, 4, 6-9, 11, 13-18 and 28-33 will be pending in the application. Reexamination and reconsideration are requested.

I. 35 U.S.C. §102(b) Rejection of Claims 1, 2, 7, 8 and 9 over Stone

Claims 1, 2, 7, 8 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Stone (U.S. 5,314,114). Reexamination and reconsideration are requested.

Claims 1, 2 and 7

Applicants' claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall;

wherein said container further comprises a sheet of material covering said hole while said container is in said open position;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and
wherein, said engaging at least a portion of said panel with at
least a portion of said wall comprises engaging said hinge portion with
said at least a portion of said wall.

Claim 1 has been amended herein, as indicated above, to now include the limitations previously appearing in dependent claim 5. Claim 5 has been canceled. Since the Examiner has not rejected claim 5 as being anticipated by Stone, the inclusion of the claim 5 subject matter into claim 1 overcomes the Examiner's rejection of claim 1 as being anticipated by Stone.

Claims 2 and 7 are allowable at least as depending from allowable base claim 1.

Claims 8 and 9

Applicants' claim 8, as amended herein, recites the following:

A container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container and a third re-closed condition;

wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;

wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall member, thus leaving a hole in said at least one wall;

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;

a sheet of material covering said hole while said container is in said second open condition;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and

wherein said at least a portion of said panel comprises said hinge portion.

Claim 8 has been amended herein, as indicated above, to now include the limitations previously appearing in dependent claim 12. Claim 12 has been canceled. Since the Examiner has not rejected claim 12 as being anticipated by Stone, the inclusion of the claim 12 subject matter into claim 8 overcomes the Examiner's rejection of claim 8 as being anticipated by Stone.

Claim 9 is allowable at least as depending from allowable base claim 8.

II. 35 U.S.C. §102(b) Rejection of Claims 14-26 over Graybill

Claims 14-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by Graybill (U.S. 3,187,977). Reexamination and reconsideration are requested.

Claims 14-16

Applicants' claim 14, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;

moving said lid to an open position by applying an opening force thereto, wherein said opening force causes said hinge portion to separate from said second wall, thereby forming a hole in said second wall;

moving said lid to a closed position by applying a closing force thereto; and

releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said second wall.

Claim 14 has been amended herein to add the language underlined

above. This language is fully supported by applicants' originally filed application with reference, for example, to drawing Fig. 16 where a hole 356 is shown and also with reference to applicants' written description, for example, at page 4, lines 33-37. No new matter has been added.

As a result of the amendment discussed above, claim 14 now recites, for example, the following:

wherein said opening force causes said hinge portion to separate from said second wall, thereby forming a hole in said second wall;

Graybill discloses a carton having a re-closeable lid. To open the lid, a user pulls on the pull-tab P causing a pair of friction wings W (e.g., Fig. 1-3) to flex sufficiently to withdraw from behind the protruding portions of a pair of "Van Buren Ears" V and V¹ (see col. 4, lines 48-55). To reclose the lid, the friction wings W are moved beneath the ears V and V¹.

Opening the Graybill carton, however, clearly does not form a "hole in said second wall" as now recited in claim 14. Accordingly, applicants' amendment to claim 14 is believed to overcome the rejection over Graybill.

Claims 15 and 16 are allowable at least as depending from allowable base claim 14.

Claims 17 and 18

Applicants' claim 17, as amended herein, recites the following:

A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;
a hinge portion formed in said second wall, said hinge portion
being movably attached to said lid;

wherein in said open condition, said hinge portion remains
movably attached to said lid but has been removed from said second
wall, thus leaving a hole in said second wall;

wherein, in said closed condition, at least a portion of said hinge
portion is engaged with at least a portion of said second wall; and

wherein said hinge portion is movably attached to a stationary
portion via a score line and wherein said stationary portion is attached
to said lid.

Claim 17 has been amended herein to add the language underlined
above in a manner similar to the amendment to claim 14. Accordingly, claim
17 is allowable for at least the same reasons advanced above with respect to
claim 14.

Claim 18 is allowable at least as depending from allowable base claim
17.

Claims 19-26

Claims 19-26 have been canceled.

**III. 35 U.S.C. §103(a) Rejection of Claims 1, 2, 4, 7-9 and 11 over
Williamson in view of Carr**

Claims 1, 2, 4, 7-9 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williamson (U.S. 3,073,501) in view of Carr (2,421,141). Reexamination and reconsideration are requested.

Claims 1, 2, 4 and 7

Applicants' claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall;

wherein said container further comprises a sheet of material covering said hole while said container is in said open position;

wherein, said panel includes a stationary portion and a hinge

portion separated from said stationary portion by a score line;
wherein, said stationary portion is attached to said lid; and
wherein, said engaging at least a portion of said panel with at
least a portion of said wall comprises engaging said hinge portion with
said at least a portion of said wall.

As discussed previously, claim 1 has been amended herein, as indicated above, to now include all of the limitations previously appearing in dependent claim 5. Claim 5 has been canceled. Since the Examiner has not rejected claim 5 over Williamson in view of Carr, the inclusion of the claim 5 subject matter into claim 1 overcomes the Examiner's rejection of claim 1 as being unpatentable over Williamson in view of Carr.

Claims 2, 4 and 7 are allowable at least as depending from allowable base claim 1.

Claims 8, 9 and 11

Applicants' claim 8, as amended herein, recites the following:

A container comprising:
a body portion having at least one wall;
a lid movably attached to said body portion;
wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container and a third re-closed condition;
wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;
wherein in said second condition, said panel remains attached

to said lid but has been removed from said at least one wall member, thus leaving a hole in said at least one wall;

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;

a sheet of material covering said hole while said container is in said second open condition;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and

wherein said at least a portion of said panel comprises said hinge portion.

As discussed previously, claim 8 has been amended herein, as indicated above, to now include all of the limitations previously appearing in dependent claim 12. Claim 12 has been canceled. Since the Examiner has not rejected claim 12 over Williamson in view of Carr, the inclusion of the claim 12 subject matter into claim 8 overcomes the Examiner's rejection of claim 8 as being unpatentable over Williamson in view of Carr.

Claims 9 and 11 are allowable at least as depending from allowable base claim 8.

IV. 35 U.S.C. §103(a) Rejection of Claims 5 and 12 over Williamson in view of Carr and Fleming

Claims 5 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williamson (U.S. 3,073,501) in view of Carr (2,421,141) and further in view of Fleming (U.S. 2,583,211). Reexamination and reconsideration are requested.

As noted above, the subject matter of dependent claims 5 and 12 has been added to independent claims 1 and 8, respectively; claims 5 and 12 have been canceled. Since the subject matter previously appearing in claims 5 and 12 now is in independent claims 1 and 8, respectively, the current rejection over Williamson in view of Carr and Fleming will now be addressed with respect to claims 1 and 8.

Claim 1

Applicants' claim 1, as amended herein, now recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;
releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall;
wherein said container further comprises a sheet of material covering said hole while said container is in said open position;
wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;
wherein, said stationary portion is attached to said lid; and
wherein, said engaging at least a portion of said panel with at least a portion of said wall comprises engaging said hinge portion with said at least a portion of said wall.

The Examiner takes the position that the limitations of claim 1 are obvious in view Williamson in view of Carr and further in view of Fleming. At the outset, applicants assert that there is no teaching or motivation to combine the Williamson, Carr and Fleming references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

Applicants further point out that, even the Examiner's proposed combination of references fails to meet all of the elements of claim 1. Specifically, the Examiner states the following on page 3 of the Office action:

Fleming teaches that it is known in the art to provide a stationary and hinge portion separated by score lines. It would have been obvious to

one of ordinary skill in the art to provide a stationary and hinge portion separated by score lines in the combination of Carr as taught by Fleming to secure the closure easily.

Referring to Fig. 10 of Fleming, a "disk-like closure" 7 is attached to a "primary closure" 3. The disk-like closure 7 appears to include a first portion attached to the primary closure 3 and a second portion movably attached to the first portion by a score line (unnumbered in the Fleming reference).

The disk-like closure 7 fits within the dispensing opening of the container in order to maintain the container in a closed condition (see, e.g., Fleming, column 3, lines 1-8).

Turning now to the Williamson reference, a carton is disclosed having a full-opening hinged cover. In other words, when the cover of the carton is moved to a fully open position (the cover is shown partially opened in Fig. 6), the entire top of carton is uncovered and forms the dispensing opening. A series of triangles 43, 44, 45, Fig. 8, are provided in order to initially secure the cover in its closed position and then to facilitate reclosing the carton subsequently.

The Examiner proposes applying the teaching of Fleming to Williamson in order to provide the Williamson carton with a panel including a stationary portion and a hinge portion separated from the stationary portion by a score line as recited in applicants' claim 1. Fleming, however, teaches a stationary portion and an attached hinged portion that engages the *dispensing opening* of a carton when reclosing. Accordingly, applying the teaching of Fleming to Williamson would, at best, result in a stationary portion and hinge portion that engages with the dispensing opening of the Williamson carton (i.e., the upwardly facing full opening discussed above) and not the holes formed by the triangles 43, 44, 45. Applicants respectfully assert, however, that this would result in an inoperative device. Specifically, with reference again to Fig. 10 of Fleming, the movable portion functions to retain

the lid in a closed position by engaging with portions of the horizontal upper wall surrounding the opening. In the Williamson device, however, there is no horizontal wall surrounding the opening (since, as discussed above, Williamson discloses a full opening type carton). Accordingly, the Fleming retention feature would not operate properly in conjunction with the Williamson carton. It is generally settled that a change in a prior art device which makes the device inoperable for its intended purpose cannot be considered to be an obvious change. *Hughes Aircraft Co v. United States*, 215 U.S.P.Q. 787, 804 (Ct.Cl. Trial Div. 1982) modified (to affirm validity and reverse infringement holding), 717 F.2d 1351 [219 USPQ 473] (Fed. Cir. 1983).

Accordingly, for the reasons set forth above, applicants respectfully assert that the Examiner's rejection is improper.

Claim 8

Applicants' claim 8, as amended herein, now recites the following:

A container comprising:
a body portion having at least one wall;
a lid movably attached to said body portion;
wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container and a third re-closed condition;
wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;
wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall member,

thus leaving a hole in said at least one wall;

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;

a sheet of material covering said hole while said container is in said second open condition;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and

wherein said at least a portion of said panel comprises said hinge portion.

Claim 8, thus, is allowable for at least the reasons advanced above with respect to claim 1.

V. 35 U.S.C. §103(a) Rejection of Claims 1, 2, 4, 5, 7-9, 11 and 12 over Fleming in view of Brooks or Ignell

Claims 1, 2, 4, 5, 7-9, 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fleming (U.S. 2,583,211) in view of either Brooks (U.S. 2,434,756) or Ignell (3,168,233). Reexamination and reconsideration are requested.

Claims 1, 2, 4, 5 and 7

Applicants' claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said lid to an open position, in which product can be dispensed from said container, by applying an opening force thereto, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said lid to a closed position by applying a closing force thereto;

releasably retaining said lid in said closed position by engaging at least a portion of said panel with at least a portion of said wall;

wherein said container further comprises a sheet of material covering said hole while said container is in said open position;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;
wherein, said stationary portion is attached to said lid; and
wherein, said engaging at least a portion of said panel with at least a portion of said wall comprises engaging said hinge portion with said at least a portion of said wall.

The Examiner takes the position that the limitations of claim 1 are obvious over Fleming in view of either Brooks or Ignell. At the outset, applicants assert that there is no teaching or motivation to combine Fleming with either Brooks or Ignell as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

Applicants further point out that, even the Examiner's proposed combination of references fails to meet all of the elements of claim 1, as now amended. Specifically, claim 1 requires that a sheet of material cover the hole "while said container is in said open position". The "open position" is further defined in claim 1 as one "in which product can be dispensed from said container". Accordingly, claim 1 requires that it be possible to dispense product from the container while a sheet of material covers the hole. This is possible in applicants' container because the "hole" being referred to in the claim is not the dispensing opening.

The Fleming container, however, only has one opening - i.e., the dispensing opening (see, e.g., Fig. 8 of Fleming). If this opening were covered with a sheet of material, then the container, necessarily would not be in an "open position" as defined in applicants' claim 1 since it would not be

possible to dispense product from the Fleming container. Accordingly, even the Examiner's proposed combination of references fails to meet all of the limitations of claim 1.

Claims 2, 4 and 7 are allowable at least as depending from allowable base claim 1. Claim 5 has been canceled.

Claims 8, 9, 11 and 12

Applicants' claim 8, as amended herein, now recites the following:

A container comprising:

a body portion having at least one wall;

a lid movably attached to said body portion;

wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container and a third re-closed condition;

wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;

wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall member, thus leaving a hole in said at least one wall;

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;

a sheet of material covering said hole while said container is in said second open condition;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and
wherein said at least a portion of said panel comprises said
hinge portion.

Claim 8 is allowable for at least the reasons advanced above with respect to claim 1. Specifically, claim 8 requires that a sheet of material cover the hole "while said container is in said second open condition." Claim 8 further specifies that the "second open condition" be one "in which product can be dispensed from said container". Accordingly, claim 8 requires that it be possible to dispense product from the container while the sheet of material covers the hole in a manner similar to claim 1.

Claims 9 and 11 are allowable at least as depending from allowable base claim 8. Claim 12 has been canceled.

VI. New Claims 28-33

New claims 28-33 have been introduced herein. New claims 28-33 are fully supported by applicants' originally-filed application with reference, for example, to drawing Figs. 13 - 18 and the written specification at page 4, line 26 - page 7, line 2. No new matter has been added.

In view of the above, all of the claims are now believed to be in condition for allowance. Re-examination and reconsideration are requested.

Respectfully submitted,
KLAAS, LAW, O'MEARA & MALKIN, P.C.

By 

Michael A. Goodwin, Reg. No. 32,697
KLAAS, LAW, O'MEARA & MALKIN, P.C.
1999 Broadway, Suite 2225
Denver, CO 80202
Telephone: (303) 298-9888
Fax: (303) 297-2266
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